

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
MISSISSIPPI, OXFORD DIVISION**

**CLAUDIA LINARES as spouse of ISMAEL LOPEZ,
Deceased, and Edward T. Autry as Administrator of
the Estate of Ismael Lopez, Deceased**

PLAINTIFFS

vs.

NO. 3:19cv133-NBB-RP

**CITY OF SOUTHAVEN, STEVE PIRTLE, in his official capacity
as Chief of Police of the Southaven Police Department, OFFICER
SAMUEL MAZE, Individually and in his official capacity as a Southaven
Police Officer, OFFICER ZACHARY DURDEN, Individually and in his
official capacity as a Southaven Police Officer, and JOHN DOES 1-25**

DEFENDANTS

**MOTION TO DISMISS OF DEFENDANT STEVE PIRTLE BASED ON ABSENT
STANDING AND/OR ABSENCE OF JURISDICTION, AND/OR, IN THE
ALTERNATIVE, DISMISSAL BASED ON SOVEREIGN IMMUNITY**

1. Steve Pirtle, hereinafter “Pirtle” is named in the Complaint a Defendant “in his official capacity as Chief of Police of the Southaven Police Department.” Pirtle asserts in the capacity in which he was sued that Plaintiff Linares is not credible in the assertion that she was legally married to Ismael Lopez and/or that Plaintiff Linares has no standing to sue, that no standing exists for the claims related to Ismael Lopez, that Plaintiff Autry was not properly appointed as Administrator, and/or that Administrator Autry was appointed Administrator by virtue of apparent conflicting affidavits and/or material misrepresentations thereby voiding his appointment ab initio. Pirtle moves for dismissal for these reasons and other reasons articulated in the supporting brief to this Motion as well as the Motions, Briefs, and Replies filed by Defendant Southaven and Defendant Durden. Neither Plaintiff has standing. All state law claims are barred by sovereign immunity pursuant to the Mississippi Tort Claims Act. The persons

claimed as legally related to Ismael Lopez in the estate proceeding seemingly were not related by law including under the laws of the State of Mississippi or any other applicable laws. No civil rights under the Fourth or Fourteenth Amendments of the United States Constitution as alleged by Plaintiffs in the Complaint exist.

2. In support of this Motion, Pirtle relies on the record as a whole including the exhibits filed by Defendant City of Southaven, MS at dockets 17-1 through 17-5 and by Defendant Durden filed at dockets #19-1 through 19-5 as well as public records and governmental websites such as those associated with immigration matters.

3. The exhibits filed in support of the City of Southaven Motion and this Motion include:

- Exhibit 1 Records with supporting affidavit of custodian of records from the Mississippi Bureau of Investigations Report on alleged events filed at docket #17-1 ;
- Exhibit 2 Certified copy of the entire court file from DeSoto County Chancery Court cause # 18-cv-505 which is the estate court matter in which Plaintiff Autry claims appointment as Administrator filed at docket #17-2 ;
- Exhibit 3 Records with supporting affidavit of custodian of records from the Municipal Court of the City of Horn Lake, Mississippi including the arrest of Ismael Rodriguez Lopez in 2013 resulting in deportation filed at docket #17-3 ;
- Exhibit 4 Record that the name of the father of Ismael Lopez Rodriguz is Joel Lopez and the name of his mother Concepcion Rodriguez filed at docket #17-4 ;
- Exhibit 5 Records with supporting affidavit of custodian of records of the City of Southaven, Mississippi on Rodolfo Linares vital statistics that match his

birth certificate filed at docket #17-5.

4. The exhibits filed in support of the Motion of Defendant Zachary Durden and this Motion include:

- Exhibit 1 record showing criminal history of Ismael Lopez filed at docket #19-1;
- Exhibit 2 Certified copy of the court file from DeSoto County Chancery Court cause # 18-cv-505 filed at docket #19-2 which is the same as docket #17-2 with redaction;
- Exhibit 3 Record from the municipal court of Horn Lake, Mississippi on the arrest of Ismael Rodriguez Lopez in 2013 filed at docket #19-3;
- Exhibit 4 Record that Ismael Lopez Rodriguez father was Joel Lopez and his mother was Concepcion Rodriguez filed at docket #19-4;
- Exhibit 5 Record of Rodolfo Linares vital statistic that matches his birth certificate filed at docket #19-5 which is the same as filed at docket #17-5 with redaction.

4. Pirtle also relies on and cites in support of this Motion by reference the memorandum brief of Defendant Southaven filed at docket # 18 and of Defendant Durden filed at docket #20 and the two separate replies of each described Defendant filed at dockets #30 and 31 in support of this Motion to Dismiss for lack of jurisdiction and/or for other reasons all of which support that Pirtle is entitled to dismissal in whole or in part of the claims asserted in the Complaint.

Respectfully submitted, this the 13th day of November, 2019.

/s/ Katherine S. Kerby

Katherine S. Kerby, MSB # 3584, Attorney for Steve Pirtle, named a Defendant in the Complaint “in his official capacity as Chief of Police of the Southaven Police Department.”

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to all Counsel of record including the following:

Michael Carr, Esq.

Murray B. Wells, Esq.

Aaron A. Neglia, Esq.

SO CERTIFIED, this the 13th day of November, 2019

s/ Katherine S. Kerby
KATHERINE S. KERBY